

Applicant, in the remarks following, respectfully responds to each issue raised by the examiner. The following sections are numbered similarly to the Action.

Section 1. With regard to claims 1 and 10, examiner states that no frame, no base and no boom structure have been set forth. With regard to the structures, applicant respectfully points out that that he has used no unusual or self-derived lexicography and that these terms, in and of themselves, are defined as structures. Further the base is set forth as configured as a palette which is a term of art well known in material handling as a structure upon which other units can be located and which acts as the structure that a material handling apparatus contacts, lifts and moves and is disposed to rest upon the ground if so desired. However, in the interest of claim clarity, the amendment to claim 1 further defines the base, frame and boom using Figure 1 as antecedent basis. Similarly, the amended claim sets forth how the lid is moved (by the action of the lift truck – “the lifting and moving capabilities of the truck” - see specification page 4 starting at line 33 for support). Claim 10 has been amended to depend from claim 1 whereby the delineation of structure applies to that claim as well.

Further the examiner notes absence in claim 1 of lift truck structure. Applicant respectfully points out that no claim is made to an improvement in fork lift trucks. To point this out clearly and distinctly, claim 1 has been amended in the preamble defining the invention as “an accessory to a fork lift truck”. Please see page 1 line 26 for antecedent basis. Applicant has cancelled claim 6 which claimed the novel combination of the accessory of the instant invention with fork trucks. The accessory now stands alone for patentable consideration.

Claim 2 was rejected for improper alternate claiming. Applicant remains under the belief that Markush type claiming may be used in mechanical applications but, since it serves merely as a claim-number-saving convention, applicant has changed the claiming format. By amendment above, claim 2 has been cancelled and replaced by new

claims 13 and 14 which covers two of the alternates. "Hooks" are now included in claim 3 (amended). All have the prior claims as basis.

Claim 4 has been amended to remove the alternate phrasing leaving "fitting" as the remaining element with its meaning fully supported throughout the text. The end stop has been further described (based on Fig. 1)

Re claim 3, the objected-to, alternate phrasing has been removed by amendment and the lack of antecedent basis for "upper" and "lower surfaces" corrected by amendment to claim 1 where these elements are delineated. This amendment also is responsive to the examiner's rejection in claim 4. Again the relationship is apparent in Fig. 1.

Further, with regard to claim 4, the function and structure of "limit stop" is questioned. This is described in the specification on page 3 line 30. Claim 4 has been amended to include further definitive description, "comprising a protuberance on said upper surface" which is described in the specification as just noted and seen as 32 in Figure 1. The function is addressed by the addition of a "whereby clause", "whereby an engaged lid handle cannot inadvertently slide toward the frame beyond said stop."

Re claim 10, the examiner requires detailed description of Figs 6 and 7. By amendment above this has been done. No new matter is included. All matter therein derives from the as-filed figures. Claim 10 has been amended based on this added text and the as-filed Figs. 6 and 7. Ram trucks are a sub-species of fork truck and are so stated in amended claim 10 and are now described fully in the specification in the added material describing Figs. 6 and 7. This provides antecedent basis for the accessory of claim 10.

Re claim 5 the function and structure of the "safety strap" is not understood by the examiner. Based on Fig. 1 an expanded description of the "strap" has been inserted in the specification on page 3 line 18. This inserted material is not new matter and

merely describes what is seen in the figure. Claim 5 has been amended to include this description based on that figure and the added description.

Re claims 9 and 12 which stand rejected for inadequate description of the “lifting shackle”, please note that claim 12 has been cancelled. Claim 9 has been amended above to change “shackle” to “hook fitting”. See 34 in the figures and page 3 line 31 where “hook” is used. Applicant has added the further (and obvious) limitation of locating that fitting on the lower surface of the boom as shown in the figures and has provided a “whereby” clause outlining its use which provides a clear description as required.

With regard to the “one ear” of claim 11 which lacked an enabling description, applicant has amended the claim based on Figs 6 and 7 and the description added by amendment above. Ears are specified to have holes and to be attached. The configuration in use has been clarified. The meaning of “pf” has been clarified as well by replacing this typographical error, for which applicant apologizes, with the intended “of”.

The double inclusion of parts in claim 5 has been corrected by amendment above by replacing “a fork truck with “said fork truck” referring to claim 1.

Section 2. The content of 35 U. S. C. 103(a) is duly noted by applicant.

Section 3. Claims 1 –12 are pending in the as-filed application. All stand rejected under 35 U. S. C. 103(a) as being unpatentable over the Canadian Patent (,989) in view of Glass et al. (,399). Applicant respectfully traverses this in view of the amendments and remarks in this writing. The Canadian Patent presents a lifter that uses a carriage with means for transverse shifting (see page 3, third paragraph) involving mechanical complication such as bearings and hydraulic cylinders and the like, and is largely devoted to covers that have stacking pads – see page 6 at line 28 - albeit provision of chains and hooks is contemplated for other situations such as where stacking pads that mate with the cups of the apparatus are not present (page 11 line 11). This requires special rigging.

Applicants apparatus is characterized by simplicity – all motions are by the fork truck itself (and this is now included in claim 1 (amended)). The Canadian patent does not teach or suggest this but requires added means such as the basic shift frame and hydraulic cylinders to accomplish transverse motions. As the examiner notes the cited patent does not teach use of a boom and makes not a hint that the elaborate carriage employed could be replaced by a simple boom. It provides no incentive for such a modification. Further, the cited Canadian patent is restricted to lifting a cover having “spaced lifting loops” (see page 6 line 8 where it teaches locking the lifter to the lid with hydraulically actuated pins and is incapable of handling the variety of single handles on single lids encountered in the general field of operations as does the lifter of applicant’s application. Indeed the Canadian lifter is directed at one special type of cover. It does not do the same thing in the same way and does not contain a teaching that would enable one of ordinary skill to do so.

Applicant’s approach is to aim the boom end into a single handle; into the open sided space defined by that handle, and use the truck to lift and move. See the specification page 4 line 33 to page 5 line 11. The fittings described on the boom serve to handle distorted handles and to meet situations not regularly encountered. Note that in the detailed description of the preferred embodiment, page 4 line 27, preferred boom dimensions are stated (an 8 inch by 6 inch and ½ inch by ½ inch I-beam). Applicant, based on this and Fig. 1., has added to claim 1 that the lid handle comprises “enclosing an open-sided space” into which the boom is introduced. Claim 1 also has been amended to limit the vertical height of the boom to that which fits into the most encountered lid handles and to require that relationship (basis as above).

Glass et al., the ,399 patent,, while it is directed at an adjustable locking shackle, teaches a boom engaged by a fork truck. This boom is extensible and has an infinitely adjustable self-locking stirrup for mounting load hooks. This patent is a means of modifying a fork truck to serve as a crane especially one with spaced-apart lifting hooks.. There is no teaching or hint that the boom-end may be thrust into a lid handle space to accomplish lid lifting and replacing. The extensible boom of Glass et al. cannot do this

without telescoping unless constrained by some locking means not described. There is a fixed outer boom section 18 mounted to a frame 16 but it is not arranged or sized as a unit with a distal end that can be inserted into a lid handle to lift and move a lid. It is encumbered by the extension boom of the sliding inner boom section 19 and intermediate load supporting mechanism 20 (see column 2 line 32). To function as applicant's boom, the apparatus of ,399 would require further modification not taught nor suggested and a recognition of the novel functioning of applicant's invention.

The examiner is respectfully directed to consider that the combination of the two cited patents, involving a direct incentive to combine the teachings which is nowhere suggested and involving significant modification of the components of both patents as it does, would not occur to the ordinary person in a material handling yard.

The application now presents independent claim 1(amended) and, dependent from this claim, amended claims 3, 4, 5, 7, 9, 10 and 11, as-filed claim 8, and new claims 13 and 14. The dependent claims should all be allowable upon the allowance of the independent claim.

In addition, applicant wishes to point out that the instant lid lifter was long needed to simplify the task of removing heavy rail car lids with ease and rapidity. The apparatus of this application is now in active use in a large, busy, dockside-rail-yard. Applicant reports that the embodiment of claim 4 (amended) has proven capable of removing 21 to 24 lids in about twenty minutes (hitherto not possible) without any prior special rigging greatly increasing productivity and safety.

Section 4. Th examiner notes that the application contains claims directed to patentably distinct species of the claimed invention: Species A – Figs. 1 and 2 or Species B – Figs. 6 and requests election of a single disclosed species, there being no apparent generic claim. Applicant elects Species A. On consideration and after review of the description (necessarily added) of Figs. 6 and 7, applicant regards Species B a sub-

species of Species A and has made claim 10 dependent from claim 1, as are all claims now in the application, rendering the election moot.

Section 5. Further elections are requested: to wit. Species C – Fig. 3 or Species D – Fig. 4 and lid handles as represented by Species E – Fig 5A or Species F – Fig 5B or Species G – Fig. 5C or Species H – Fig. 5D.

Applicant elects Species C over Species D. However in the amended claims presented herewith all claims are dependent from claim 1. All dependent claims are variations of the basic invention and include its limitations. They should be allowable with allowance of the base claim.

Applicant elects Species E over Species F, G, or H. Here applicant recognizes (and regrets) a confusion resultant from the as-filed Figs 5 A through D. As noted on page 2 line 26, these drawings are representations of typical lid handles. They are not part of the claimed invention but relate to the field of use and were in existence long before the instant invention. Indeed their varied structures contribute to the very need for the instant invention. To correct the apparent confusion, the applicant respectfully requests permission of the examiner to mark each of these figures as “Prior Art”. To that end, applicant includes with this document a new sheet of drawings of Figs 5A through 5D (informal) with this change so marked as well as a new sheet of drawings (also informal) so marked in red. This, applicant suggests with due respect, renders the election unnecessary.

Section 6. The prior art made of record and not relied is duly noted.

Drawings. The Office Action Summary notes that the drawings filed on 8-17-01 are informal. Applicant herewith notes this and will submit formal drawings in due course.

In Conclusion The applicant is appreciative of the thorough and thoughtful examination and has responded to each point raised including a traverse of the cited

references. In view of the above amendments to the specification and to the claims and further in view of the remarks presented, applicant respectfully believes that the application is now in condition for allowance and in condition to be passed on to issuance.

Respectfully submitted



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Part 1

Approved
JK 5/27/03



